

KAKL600015382024



**IN THE COURT OF THE PRL. CIVIL JUDGE AND
JMFC, AT SRINIVASPURA.**

:PRESENT:

SRI. MANU B.K., *B.A.L., LL.M.*,
Prl. Civil Judge & JMFC, Srinivaspura.

Dated, this the 16th day of July 2024

O.S.No: 127/2024

PLAINTIFF/S:

Ameena Parveez

(By Sri. K.S.S., Adv.,)

-V/s-

DEFENDANT/S:

Nissar Ahmed Khan and others.

(Defendant No.1 By Sri. K.P., Adv.,)

PARTIES TO I.A.NO.1

Applicant/Plaintiff : Ameena Parveez

-V/S-

Opponent/Defendant : Nissar Ahmed Khan and others.

ORDERS ON IA No.1

The plaintiff has filed this application under Order 39 Rule 1 and 2 of C.P.C seeking to restrain the defendant No.1 from alienating the suit schedule properties.

2. In the affidavit annexed to the application, the plaintiff has stated that the plaintiff and defendants are related to each other. The propositor by name Ameen Khan and Zanaib Bi had 8 children. They are Khadar Nawaz Khan @ Ameer Jan, Noor Ahamed Khan, Amma Bi, Sabera Bi, Ameena Bi, Rehamath Unnissa, Azeez Unnissa and Najamunissa. The plaintiff is the legal heir of Sabera Bi and the defendant No.1 is the legal heir of Khadar Nawaz

Khan. The suit schedule properties are ancestral properties of Ameen Khan and he has purchased the aforesaid properties through a registered sale deeds dated 26.08.1970 and 30.08.1972. The said properties were registered in the name of Khadar Nawaz Khan @ Ameer Jan. After death of Khadar Nawaz Khan, the suit schedule properties are standing in the name of defendant No.1. However, the defendant No.1 is trying to alienate the aforesaid properties by taking undue advantage of revenue entries standing in his name. Therefore, the plaintiff has filed this application and sought to allow the same.

3. As against the application filed by the plaintiff, the defendant No.1 has filed memo adopting the written statement as his objection to IA.No.1. In the written statement, the defendant No.1 has contended that the suit schedule properties

are purchased by his father. His father has purchased the property measuring $\frac{1}{2}$ extent out of 2 acres 23 guntas in Sy.No.152/2 and 2 acres 19 guntas in Sy.No.150 through a registered sale deed dated 26.08.1970. The property measuring 2 acres 23 guntas in Sy.No.152/2 and 2 acres 19 guntas in Sy.No.150 have been purchased by his father through a registered sale deed dated 30.08.1971. During his life time, the said properties were standing in his name and subsequently, after his death the properties are standing in the name of defendant No.1 with the consent of defendant No. 2 to 7. The plaintiff has no right over the suit schedule properties and plaintiff is not belongs to family of defendant No.1. Therefore, the defendant No.1 has sought for dismissal of application.

4. Heard the learned counsel for the plaintiff and defendant No.1.

5. The points would arise for my consideration are;

1.Whether the plaintiff has made out a prima-facie case?

2.Whether the balance of convenience lies in favour of plaintiff?

3.Whether irreparable injury would be caused to the plaintiff if an order of temporary injunction is not passed?

4. What Order?

6. My answer to the above points are as under;

Point No.1 : In the **NEGATIVE**

Point No.2 : In the **NEGATIVE**

Point No.3 : In the **NEGATIVE**

Point No.4 : **As per final order,**
for the following;

REASONS

7. **Point No.1 TO 3:** Since this points are interconnected, those points are taken up together for common discussion and in order to avoid repetition of facts.

8. In order to grant the temporary injunction claimed by the plaintiff, the plaintiff must establish that there is a *prima-facie* case in her favour and balance of convenience lies in favour of the plaintiff. The plaintiff is also required to establish that, if an order of temporary injunction is not granted, then irreparable injury would be caused to the plaintiff and same shall not be compensated by way of any other reliefs. In light of the above legal aspect, now let me examine the factual matrix of this case. In the application, the relief is sought only against the

defendant No.1 and counsel for the plaintiff as well as defendant No.1 have addressed the arguments on IA.No.1. Hence, the IA.No.1 is adjudicated.

9. The plaintiff has filed this application by contending that the defendant No.1 is trying to alienate the suit schedule properties which are standing in his name. The plaintiff further contended that the said properties were purchased by her propositor by name Ameen Khan in the name of father of the defendant No.1. The defendant No.1 has produced certain documents. The said documents includes the copy of sale deed dated 26.08.1970 and 30.08.1971. On perusal of those documents, it appears that the suit schedule properties are purchased by Khadar Nawaz Khan. Therefore, the said properties are his self-acquired properties. The

name of Ameen Khan is not found in the said documents. As per the contention of the plaintiff, the Ameen Khan has purchased the suit schedule properties in the name of Khadar Nawaz Khan. However, no such recitals are found in the sale deeds. Hence, the contention of the plaintiff is not maintainable and hence, there is no prima facie case in favour of the plaintiff.

10. The plaintiff has contended that she is the daughter of Sabera Bi and defendant No.1 is related to her. The plaintiff has not produced any documents at this stage to prove the relationship. The genealogical tree produced by the plaintiff is not issued by proper authority. Whereas, the defendant No.1 has produced the genealogical tree issued by the Deputy Tahasildar of Srinivaspura. The said

genealogical tree does not disclose the name of the plaintiff nor her mother. Therefore, at this stage, the genealogical tree produced by the defendant No.1 would clearly depict that there is no prima facie case in favour of the plaintiff.

11. The plaintiff has contended that the suit schedule properties were standing in the name of Khadar Nawaz Khan and subsequently, same is standing in the name of defendant No.1. Thereby, the plaintiff is claiming partition in the said properties. To grant the relief claimed by the plaintiff, the plaintiff must establish the relationship. However, in this case, at this stage the relationship is not proved by the plaintiff. Moreover, the genealogical tree produced by the plaintiff itself depicts that the family of plaintiff and family of

defendant No.1 is distinct. As such, it appears that balance of convenience does not lies in favour of the plaintiff.

12. The plaintiff has contended that the defendant No.1 is trying to alienate the suit lands by taking undue advantage of revenue entries. However, the material discloses that the suit properties were acquired by the father of the defendant No.1 and same is inherited by the defendant No.1. The documents produced by the defendant No.1 discloses that the plaintiff and defendant No.1 are not related to each other. Moreover, it is not the case of the plaintiff that the father of the defendant No.1 has acquired the suit lands on behalf of joint family. Therefore, the properties acquired by father of defendant No.1 would becomes his self-acquired

properties. Hence, the claim of the plaintiff is not maintainable. Such being the case, if the temporary injunction is granted, irreparable injury will be caused to the defendant No.1 to enjoy his right over the suit schedule properties. Whereas, on the other hand, the plaintiff has failed to prove the relationship at this stage and also failed to produce prima facie documents to grant temporary injunction. Hence, if the temporary injunction is not granted, no injury will be caused to the plaintiff.

13. During the course of arguments, the learned counsel for the plaintiff produced certain documents, but those documents does not discloses the flow of title of the properties from Ameen Khan to Khadar Nawaz Khan and Khadar Nawaz Khan to defendant No.1. Therefore, the very case of the plaintiff does

not discloses the prima facie case. During the course of arguments, the learned counsel for the defendant No.1 has relied upon the following Judgments;

1. 2018 (4) KCCR 3269 (S.C.Gangadharaiah V/s REMCO (BHEL), House Building Co-operative Society Limited, Bengaluru and others)

Prima facie case means not only that the plaintiff must make out serious issues for trial, but also that the suit must appear to be not frivolous or vexatious. The suit should also appear to be maintainable in order that interim order in the nature of injunction could be granted pending disposal of the suit.

2. 2024 (2) KCCR 1150 (SC) (State of Kerala V/s Union of India)

(a) A Prima facie case', which necessitates that as per the material placed on record, the plaintiff is likely to succeed in the final determination of the case; Generally speaking, the phrase 'prima facie case' is not a term of art and it simply signifies that at first sight the plaintiff has a strong case. According to Webster's International Dictionary, 'prima facie case means a case established by 'prima facie evidence', which in turn means the evidence that is sufficient

in law to raise a presumption of fact unless rebutted.

(b) 'Balance of convenience', such that the prejudice likely to be caused to the plaintiff due to rejection of the interim relief will be higher than the inconvenience that the defendant may face if the relief is so granted; and

(c) 'Irreparable injury', which means that if the relief is not granted, the plaintiff will face an irreversible injury that cannot be compensated in monetary terms.

14. On perusal of entire material on record, it appears that the plaintiff has failed to prove the purchase of suit schedule properties by Ameen Khan in the name of father of the defendant No.1. The plaintiff also failed to prove at this stage regarding relationship between the parties. The documents produced by the plaintiff would depicts that the suit schedule properties are standing in the name of defendant No.1 which have been acquired by him

from his father. The material discloses that the plaintiff has not produced any documents to show the prima facie case. The Judgments relied upon by the defendant No.1 are aptly applicable to this case. The plaintiff has failed to prove the prima facie case and balance of convenience. Therefore, if the temporary injunction is not granted, no injury will be caused to the plaintiff.

15. The plaintiff has contended that if the injunction is not granted and defendant No.1 alienate the suit schedule properties, then it will cause irreparable injury to the plaintiff. However, the plaintiff has failed to produce material documents to show that the suit schedule properties are the joint family properties. Moreover, if they are joint family properties and they are alienated during the

pendency of suit, then the said transaction will be hit by Sec.52 of T.P.Act. On the other hand, if the plaintiff failed to prove her case with respect to joint ownership over the suit schedule properties, then the injunction order will curtail the right of the defendant No.1. Hence, it appears that the plaintiff has failed to prove essential elements to grant temporary injunction at this stage.

16. The material discloses that the plaintiff has not produced any document to show the boundaries of the suit schedule properties. Moreover, as per the contention of the defendant No.1, the said properties are the self acquired properties of his father. The documents produced by the plaintiff discloses that the suit schedule properties are standing in the name of defendant No.1. Hence, it is difficult to term the

said properties as joint family properties without oral or documentary evidence. Hence, this court is of the opinion that the plaintiff has failed to show the balance of convenience and also failed to prove that the irreparable injury will be caused to her, if an order of temporary injunction is not granted. There is no prima-facie document to grant temporary injunction. Hence, this court is of the view that the plaintiff is not entitled for the reliefs claimed in the application. Hence, I am answering Point No.1 to 3 in the **NEGATIVE**.

17. **POINT No.4:** On the basis of discussion made on point No.1 to 3, I proceed to pass the following;

ORDER

**I.A.No.1 filed by the plaintiff
under Order 39 Rule 1 and 2 of
CPC is hereby rejected.**

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by him,
then corrected and pronounced by me in the open court on this
the **16th** day of **July 2024**)

(MANU .B.K.)
Prl. Civil Judge and JMFC.,
Srinivaspura.